

Mechanic Lien Law

Utah Code Title 38, Chapter 1

Current as of April 30, 2001

38-1-1. Public buildings not subject to act. The provisions of this chapter shall not apply to any public building, structure or improvement.

38-1-2. "Contractors" and "subcontractors" defined. Any person who does work or furnishes materials by contract, express or implied, with the owner, as provided in this chapter, shall be considered an original contractor, and all other persons doing work or furnishing materials shall be considered subcontractors.

38-1-3. Those entitled to lien -- What may be attached. Contractors, subcontractors, and all persons performing any services or furnishing or renting any materials or equipment used in the construction, alteration, or improvement of any building or structure or improvement to any premises in any manner and licensed architects and engineers and artisans who have furnished designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys or superintendence, or who have rendered other like professional service, or bestowed labor, shall have a lien upon the property upon or concerning which they have rendered service, performed labor, or furnished or rented materials or equipment for the value of the service rendered, labor performed, or materials or equipment furnished or rented by each respectively, whether at the instance of the owner or of any other person acting by his authority as agent, contractor, or otherwise except as the lien is barred under Section **38-11-107** of the Residence Lien Restriction and Lien Recovery Fund Act. This lien shall attach only to such interest as the owner may have in the property.

38-1-4. Amount of land affected -- Lots and subdivisions -- Franchises, fixtures, and appurtenances. The liens granted by this chapter shall extend to and cover so much of the land whereon such building, structure, or improvement shall be made as may be necessary for convenient use and occupation of the land. In case any such building shall occupy two or more lots or other subdivisions of land, such lots or subdivisions shall be considered as one for the purposes of this chapter. The liens provided for in this chapter shall attach to all franchises, privileges, appurtenances, and to all machinery and fixtures, pertaining to or used in connection with any such lands, buildings, structures, or improvements.

38-1-5. Priority -- Over other encumbrances. The liens herein provided for shall relate back to, and take effect as of, the time of the commencement to do work or furnish materials on the ground for the structure or improvement, and shall have priority over any lien, mortgage or other encumbrance which may have attached subsequently to the time when the building, improvement or structure was commenced, work begun, or first material furnished on the ground; also over any lien, mortgage or other encumbrance of which the lien holder had no notice and which was unrecorded at the time the building, structure or improvement was commenced, work begun, or first material furnished on the ground.

38-1-6. Priority over claims of creditors of original contractor or subcontractor. No attachment, garnishment or levy under an execution upon any money due to an original contractor from the owner of any property subject to lien under this chapter shall be valid as against any lien of a subcontractor or materialman, and no such attachment, garnishment or levy upon any money due to a subcontractor or materialman from the contractor shall be valid as against any lien of a laborer employed by the day or piece.

38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property. (1) A person claiming benefits under this chapter shall file for record with the county recorder of the county in which the property, or some part of the property, is situated, a written notice to hold and claim a lien within 90 days from the date:

(a) the person last performed labor or service or last furnished equipment or material on a project or improvement for a residence as defined in Section **38-11-102**; or

(b) of final completion of an original contract not involving a residence as defined in Section **38-11-102**.

(2) The notice required by Subsection (1) shall contain a statement setting forth:

(a) the name of the reputed owner if known or, if not known, the name of the record owner;

(b) the name of the person by whom the lien claimant was employed or to whom the lien claimant furnished the equipment or material;

(c) the time when the first and last labor or service was performed or the first and last equipment or material was furnished;

(d) a description of the property, sufficient for identification;

(e) the name, current address, and current phone number of the lien claimant;

(f) the signature of the lien claimant or the lien claimant's authorized agent;

(g) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents; and

(h) if the lien is on an owner-occupied residence, as defined in Section **38-11-102**, a statement describing what steps an owner, as defined in Section **38-11-102**, may take to require a lien claimant to remove the lien in accordance with Section **38-11-107**.

(3) Notwithstanding Subsection (2), an acknowledgment or certificate is not required for any notice filed after April 29, 1985, and before April 24, 1989.

(4) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or mail by certified mail a copy of the notice of lien to:

(i) the reputed owner of the real property; or

(ii) the record owner of the real property.

(b) If the record owner's current address is not readily available to the lien claimant, the copy of the claim may be mailed to the last-known address of the record owner, using the names and addresses appearing on the last completed real property assessment rolls of the county where the affected property is located.

(c) Failure to deliver or mail the notice of lien to the reputed owner or record owner precludes the lien claimant from an award of costs and attorneys' fees against the reputed owner or record owner in an action to enforce the lien.

(5) The Division of Occupational and Professional Licensing shall make rules governing the form of the statement required under Subsection (2)(h).

38-1-8 Liens on several separate properties in one claim. Liens against two or more buildings or other improvements owned by the same person may be included in one claim; but in such case the person filing the claim must designate the amount claimed to be due to him on each of such buildings or other improvements.

38-1-9. Notice imparted by record. (1) The recorder must record the claim in an index maintained for that purpose.

(2) From the time the claim is filed for record, all persons are considered to have notice of the claim.

38-1-10. Laborers' and materialmen's lien on equal footing regardless of time of filing.

The liens for work and labor done or material furnished as provided in this chapter shall be upon an equal footing, regardless of date of filing the notice and claim of lien and regardless of the time of performing such work and labor or furnishing such material.

38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected -- Instructions and form affidavit and motion. (1) A lien claimant shall file an action to enforce the lien filed under this chapter within:

(a) 12 months from the date of final completion of the original contract not involving a residence as defined in Section **38-11-102**; or

(b) 180 days from the date the lien claimant last performed labor and services or last furnished equipment or material for a residence, as defined in Section **38-11-102**.

(2) (a) Within the time period provided for filing in Subsection (1) the lien claimant shall file for record with the county recorder of each county in which the lien is recorded a notice of the pendency of the action, in the manner provided in actions affecting the title or right to possession of real property, or the lien shall be void, except as to persons who have been made parties to the action and persons having actual knowledge of the commencement of the action.

(b) The burden of proof shall be upon the lien claimant and those claiming under him to show actual knowledge.

(3) This section may not be interpreted to impair or affect the right of any person to whom a debt may be due for any work done or materials furnished to maintain a personal action to recover the same.

(4) (a) If a lien claimant files an action to enforce a lien filed under this chapter involving a residence, as defined in Section **38-11-102**, the lien claimant shall include with the service of the complaint on the owner of the residence:

(i) instructions to the owner of the residence relating to the owner's rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

(ii) a form affidavit and motion for summary judgment to enable the owner of the residence to specify the grounds upon which the owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

(b) The lien claimant may file a notice to submit for decision on the motion for summary judgment. The motion may be ruled upon after the service of the summons and complaint upon the nonpaying party, as defined in Section **38-11-102**, and the time for the nonpaying party to respond, as provided in the Utah Rules of Civil Procedure, has elapsed.

(c) The instructions and form affidavit and motion required by Subsection (4)(a) shall meet the requirements established by rule by the Division of Occupational and Professional Licensing in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(d) If the nonpaying party, as defined by Section **38-11-102**, files for bankruptcy protection and there is a bankruptcy stay in effect, the motion for summary judgment and the action to enforce the lien shall be stayed until resolution of the related claim under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

(e) If a lien claimant fails to provide to the owner of the residence the instructions and form affidavit required by Subsection (4)(a), the lien claimant shall be barred from maintaining or enforcing the lien upon the residence.

38-1-12. Repealed

38-1-13. Parties -- Joinder -- Intervention. Lienors not contesting the claims of each other may join as plaintiffs, and when separate actions are commenced the court may consolidate them and make all persons having claims filed parties to the action. Those claiming liens who fail or refuse to become parties plaintiff may be made parties defendant, and any one not made a party may at any time before the final hearing intervene.

38-1-14. Decree -- Order of satisfaction. In every case in which liens are claimed against the same property the decree shall provide for their satisfaction in the following order:

- (1) Subcontractors who are laborers or mechanics working by the day or piece, but without furnishing materials therefor;
- (2) All other subcontractors and all materialmen;
- (3) The original contractors.

38-1-15. Sale -- Redemption -- Disposition of proceeds. The court shall cause the property to be sold in satisfaction of the liens and costs as in the case of foreclosure of mortgages, subject to the same right of redemption. If the proceeds of sale after the payment of costs shall not be sufficient to satisfy the whole amount of liens included in the decree, then such proceeds shall be paid in the order above designated, and pro rata to the persons claiming in each class where the sum realized is insufficient to pay the persons of such class in full. Any excess shall be paid to the owner.

38-1-16. Deficiency judgment. Every person whose claim is not satisfied as herein provided may have judgment docketed for the balance unpaid, and execution therefor against the party personally liable.

38-1-17. Costs -- Apportionment -- Costs and attorneys' fee to subcontractor. Except as provided in Section **38-11-107**, as between the owner and the contractor the court shall apportion the costs according to the right of the case, but in all cases each subcontractor exhibiting a lien shall have his costs awarded to him, including the costs of preparing and recording the notice of claim of lien and such reasonable attorneys' fee as may be incurred in preparing and recording said notice of claim of lien.

38-1-18. Attorneys' fees -- Offer of judgment. (1) Except as provided in Section **38-11-107** and in Subsection (2), in any action brought to enforce any lien under this chapter the successful party shall be entitled to recover a reasonable attorneys' fee, to be fixed by the court, which shall be taxed as costs in the action.

(2) A person who files a wrongful lien as provided in Section **38-1-25** is not entitled to recover attorneys' fees under Subsection (1).

(3) A party against whom any action is brought to enforce a lien under this chapter may make an offer of judgment pursuant to Rule 68 of the Utah Rules of Civil Procedure. If the offer is not accepted and the judgment finally obtained by the offeree is not more favorable than the offer, the offeree shall pay the costs and attorneys' fees incurred by the offeror after the offer was made.

38-1-19. Payment by owner to contractor -- Subcontractor's lien not affected. When any subcontractor shall have actually begun to furnish labor or materials for which he is entitled to a lien no payment to the original contractor shall impair or defeat such lien; and no alteration of any contract shall affect any lien acquired under the provisions of this chapter.

38-1-20. When contract price not payable in cash -- Notice. As to all liens, except that of the contractor, the whole contract price shall be payable in money, except as herein provided, and shall not be diminished by any prior or subsequent indebtedness, offset or counterclaim in favor of the owner and against the contractor, except when the owner has contracted to pay otherwise than in cash, in which case the owner shall post in a conspicuous place on the premises a statement of the terms and conditions of the contract before materials are furnished or labor is performed, which notice must be kept posted, and when so posted shall give notice to all parties interested of the terms and conditions of the contract. Any person willfully tearing down or defacing such notice is guilty of a misdemeanor.

38-1-21. Advance payments -- Effect on subcontractor's lien. No payment made prior to the time when the same is due under the terms and conditions of the contract shall be valid for the purpose of defeating, diminishing or discharging any lien in favor of any person except the contractor; but as to any such lien such payment shall be deemed as if not made, notwithstanding that the contractor to whom it was paid may thereafter abandon his contract or be or become indebted to the owner for damages for nonperformance of his contract or otherwise.

38-1-22. Advance payments under terms of contract -- Effect on liens. The subcontractors' liens provided for in this chapter shall extend to the full contract price, but if at the time of the commencement to do work or furnish materials the owner has paid upon the contract, in accordance with the terms thereof, any portion of the contract price, either in money or property, the lien of the contractor shall extend only to such unpaid balance, and the lien of any subcontractor who has notice of such payment shall be limited to the unpaid balance of the contract price. No part of the contract price shall by the terms of any contract be made payable, nor shall the same or any part thereof be paid in advance of the commencement of the work, for the purpose of evading or defeating the provisions of this chapter.

38-1-23. Creditors cannot reach materials furnished, except for purchase price. Whenever materials have been furnished for use in the construction, alteration or repair of any building,

work or other improvement mentioned in Section **38-1-3** such materials shall not be subject to attachment, execution or other legal process to enforce any debt due by the purchaser of such materials, other than a debt due for the purchase money thereof, so long as in good faith the same are about to be applied to the construction, alteration or repair of such building or improvement.

38-1-24. Cancellation of record -- Penalty. The claimant of any lien filed as provided herein, on the payment of the amount thereof together with the costs incurred and the fees for cancellation, shall at the request of any person interested in the property charged therewith cause said lien to be canceled of record within ten days from the request, and upon failure to so cancel his lien within the time aforesaid shall forfeit and pay to the person making the request the sum of \$20 per day until the same shall be canceled, to be recovered in the same manner as other debts.

38-1-25. Abuse of lien right -- Penalty.(1) Any person entitled to record or file a lien under Section **38-1-3** is guilty of a class B misdemeanor who intentionally causes a claim of lien against any property, which contains a greater demand than the sum due to be recorded or filed:

- (a) with the intent to cloud the title;
- (b) to exact from the owner or person liable by means of the excessive claim of lien more than is due; or

- (c) to procure any unjustified advantage or benefit.

(2) In addition to any criminal penalties under Subsection (1), a person who violates Subsection (1) is liable to the owner of the property or an original contractor or subcontractor who is affected by the lien for the greater of:

- (a) twice the amount by which the wrongful lien exceeds the amount actually due; or
- (b) the actual damages incurred by the owner of the property.

38-1-26. Assignment of lien. All liens under this chapter shall be assignable as other choses in action, and the assignee may commence and prosecute actions thereon in his own name in the manner herein provided.

38-1-27. Preliminary notice to original contractor -- Form and contents -- Service -- Notice of commencement of project or improvement. (1) This section relating to preliminary notices does not apply to residential construction or to work performed in the development of subdivisions whose end use is for residential construction. For the purposes of this section, residential construction means single family detached housing and multifamily attached housing up to and including fourplexes, and includes rental housing.

(2) Except subcontractors who are in privity of contract with an original contractor or except for persons performing labor for wages, any person claiming, reserving the right to claim, or intending to claim a mechanic's lien under this chapter for labor, service, equipment, or material shall provide preliminary notice to the original contractor as prescribed by this section. Any person who fails to provide this preliminary notice has no right to claim a mechanic's lien under this chapter.

(3) The preliminary notice required by this section shall be in writing and may be given at any time during the course of the project or improvement.

(4) A person required by this section to give preliminary notice is only required to give one notice for each project or improvement, which may include an entire structure or a scheme of improvements.

(5) If the labor, service, equipment, or material is furnished pursuant to contracts with more than one subcontractor or with more than one original contractor, the notice requirements must be met with respect to the labor, service, equipment, or materials furnished to each such subcontractor or original contractor.

(6) The person required by this section to give preliminary notice is precluded from making a claim for any labor, service, equipment, or material which was provided more than 45 days prior to the date the preliminary notice is given. The preliminary notice must be given before a notice of lien is filed with the county recorder pursuant to Section **38-1-7**.

(7) The preliminary notice under this section shall include:

(a) the name, address, and telephone number of the person furnishing the labor, service, equipment, or material;

(b) the name and address of the person who contracted for the furnishing of the labor, service, equipment, or material; and

(c) the address of the project or improvement or a drawing sufficient to describe the location of the project or improvement.

(8) (a) Service of a preliminary notice is sufficient if the notice is deposited in the United States mail, certified or registered, return receipt requested, postage prepaid. Service of the preliminary notice by mail is complete upon deposit of the certified or registered mail.

(b) A preliminary notice served by mail may be addressed to the original contractor at his place of business, or his address as shown on the notice of commencement on record with the county recorder as required by Subsection (10).

(9) Any right to assert a defense of failure to comply with the preliminary notice requirements of this section is void unless the original contractor records a notice of commencement of the project or improvement with the county recorder for the county or counties where the project is located within 30 days after commencement of the project. The notice of commencement shall include the following:

(a) the name and address of the owner of the project or improvement;

(b) the name and address of the original contractor;

(c) the name and address of the surety providing any payment bond for the project or improvement, or if none exists, a statement that a payment bond was not required for the work being performed;

(d) the name and address of the project; and

(e) a legal description of the property on which the project is located.

38-1-28. Notice of release of lien and substitution of alternate security. (1) The owner of any interest in real property which is subject to a mechanics' lien recorded under this chapter, or any original contractor or subcontractor affected by the lien, who disputes the correctness or validity of the lien may, either before or after the commencement of an action to enforce the lien, record a notice of release of lien and substitution of alternate security, which meets the requirements of Subsection (2), in the office of the county recorder where the lien was recorded.

(2) A notice of release of lien and substitution of alternate security recorded under Subsection (1) shall meet the requirements for the recording of documents in Title 57, Chapter 3,

Recording of Documents, shall reference the lien sought to be released, and shall have as an attachment a surety bond or evidence of a cash deposit which:

(a) (i) if a surety bond, is executed by a surety company which is treasury listed, A-rated by AM Best Company, and authorized to issue surety bonds in this state; or

(ii) if a letter of credit or evidence of a cash deposit, meets the requirements established by rule by the Department of Commerce in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(b) is in an amount equal to 150% of the amount claimed by the lien claimant in connection with the parcel of real property sought to be released;

(c) is made payable to the lien claimant;

(d) is conditioned for the payment of the judgment which would have been rendered against the property in the action to enforce the lien together with any costs and attorneys' fees awarded by the court; and

(e) has as principal the owner of the interest in the real property, or the original contractor or subcontractor affected by the lien.

(3) Upon the recording of the notice of release of lien and substitution of alternate security under Subsection (1), the real property described in the notice shall be released from the mechanics' lien to which the notice applies.

(4) (a) Upon the recording of a notice of release of lien and substitution of alternate security under Subsection (1), the person recording the notice shall cause a copy of the notice, together with any attachments, to be served within 30 days upon the lien claimant.

(b) If a suit is pending to foreclose the lien at the time the notice is served upon the lien claimant under Subsection (4)(a), the lien claimant shall, within 90 days from the receipt of the notice, institute proceedings to add the alternate security as a party to the lien foreclosure suit.

(5) The alternate security attached to a notice of release of lien shall be discharged and released upon:

(a) the failure of the lien claimant to commence a suit against the alternate security within the same time as an action to enforce the lien under Section **38-1-11**;

(b) the failure of the lien claimant to institute proceedings to add the alternate security as a party to a lien foreclosure suit within the time required by Subsection (4)(b); or

(c) the dismissal with prejudice of the foreclosure suit or suit against the alternate security as to the lien claimant or the entry of judgment against the lien claimant in such a suit.

(6) If a copy of the notice of release of lien and substitution of alternate security is not served upon the lien claimant as provided in Subsection (4)(a), the lien claimant shall have six months after the discovery of the notice to commence an action against the alternate security, except that no action may be commenced against the alternate security after two years from the date the notice was recorded.

38-1-29. No waiver of rights. The applicability of the provisions of this chapter, including the waiver of rights or privileges granted under this chapter, may not be varied by agreement.